

General Assembly
January Session, 2013

Raised Bill No. 6437

LCO No.



Consensus Proposed Substitute Bill 03/04/2013
Referred to Committee on ENVIRONMENT
Introduced by:
(ENV)

AN ACT CONCERNING A MATTRESS STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2013*) For the purposes of this section and sections 2 to 7, inclusive, of this act:

- (1) "Brand" means a name, symbol, word or mark that attributes a mattress to the producer of such mattress;
- (2) "Commissioner" means the Commissioner of Energy and Environmental Protection;
- (3) "Covered entity" means any political subdivision of the state, any mattress retailer, any permitted transfer station, any waste-to-energy facility, any health care facility, any educational facility, any correctional facility, any military base, or any commercial or nonprofit lodging establishment that possesses a discarded mattress that was discarded in this state. "Covered entity" does not include any renovator, refurbisher or any person who only transports a discarded mattress;
- (4) "Department" means the Department of Energy and Environmental Protection;
- (5) "Discarded mattress" means any mattress that a consumer discarded, intends to discard or abandoned;
- (6) "Energy recovery" means the process by which all or a portion of solid waste materials are processed or combusted in order to utilize the heat content or other forms of energy derived from such solid waste materials;
- (7) "Foundation" means any ticking-covered structure that is used to support a mattress and that is composed of one or more of the following: A constructed frame, foam or a box spring. "Foundation" does not include any bed frame or base made of wood, metal or other material that rests upon the floor and that serves as a brace for a mattress;

(8) "Mattress" means any resilient material or combination of materials that is enclosed by a ticking, used alone or in combination with other products, and that is intended for or promoted for sleeping upon. "Mattress" includes any foundation and any renovation. "Mattress" does not include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, liquid or gaseous filled ticking, including any water bed and any air mattress that does not contain upholstery material between the ticking and the mattress core, and any upholstered furniture that does not otherwise contain a detachable mattress;

(9) "Mattress core" means the principal support system that is present in a mattress, including, but not limited to, springs, foam, air bladder, water bladder or resilient filling;

(10) "Mattress recycling council" or "council" means the nonprofit organization created by producers or a trade association representing producers that account for a majority of mattress production in the United States to design, submit and implement the mattress stewardship program described in section 2 of this act;

(11) "Mattress stewardship fee" means the amount added to the purchase price of a mattress sold in this state that is necessary to cover the cost of collecting, transporting and processing discarded mattresses by the council pursuant to the mattress stewardship program;

(12) "Mattress stewardship program" or "program" means the state-wide program described in section 2 of this act and implemented pursuant to the mattress stewardship plan;

(13) "Mattress topper" means any item that contains resilient filling, with or without ticking, that is intended to be used with or on top of a mattress;

(14) "Performance goal" means a metric proposed by the council to measure, on an annual basis, the performance of the mattress stewardship program, taking into consideration technical and economic feasibilities, in achieving continuous, meaningful improvement in improving the rate of mattress recycling in the state and any other specified goal of the program;

(15) "Producer" means any person who manufactures or renovates a mattress that is sold, offered for sale or distributed in the state under the producer's own name or brand. "Producer" includes (A) the owner of a trademark or brand under which a mattress is sold, offered for sale or distributed in this state, whether or not such trademark or brand is registered in this state, and (B) any person who imports a mattress into the United States that is sold or offered for sale in this state and that is

manufactured or renovated by a person who does not have a presence in the United States;

(16) "Recycling" means any process in which discarded mattresses, components and by-products may lose their original identity or form as they are transformed into new, usable or marketable materials. "Recycling" does not include the use of incineration for energy recovery;

(17) "Renovate" or "renovation" means altering a mattress for the purpose of resale and includes any one, or a combination of, the following: Replacing the ticking or filling, adding additional filling, rebuilding a mattress, or replacing components with new or recycled materials. "Renovate" or "renovation" does not include (A) the stripping of a mattress of its ticking or filling without adding new material, (B) the sanitization or sterilization of a mattress without otherwise altering the mattress, or (C) the altering of a mattress by a renovator when a person retains the altered mattress for personal use, in accordance with regulations of the Department of Consumer Protection;

(18) "Renovator" means any person who renovates discarded mattresses for the purpose of reselling such mattresses to consumers;

(19) "Retailer" means any person who sells mattresses in this state or offers mattresses in this state to a consumer;

(20) "Sanitization" means the direct application of chemicals to a mattress to kill human disease-causing pathogens;

(21) "Sale" means the transfer of title of a mattress for consideration, including through the use of a sales outlet, catalog, Internet web site or similar electronic means;

(22) "Sterilization" means the mitigation of any deleterious substances or organisms, including human disease-causing pathogens, fungi and insects from a mattress or filling material using a process approved by the Commissioner of Consumer Protection;

(23) "Ticking" means the outermost layer of fabric or material of a mattress. "Ticking" does not include any layer of fabric or material quilted together with, or otherwise attached to, the outermost layer of fabric or material of a mattress; and

(24) "Upholstery material" means all material, loose or attached, between the ticking and the core of a mattress.

Sec. 2. (NEW) (*Effective October 1, 2013*) (a) On or before July 1, 2014, each producer shall join the mattress recycling council and such council shall submit a plan, for the Commissioner of Energy and Environmental Protection's approval, to establish a state-wide mattress stewardship program, as described in this subsection. Retailers may

participate in said council. Such mattress stewardship program shall, to the extent it is technologically feasible and economically practical: (1) Minimize public sector involvement in the management of discarded mattresses; (2) provide for free, convenient and accessible state-wide opportunities for the receipt of discarded mattresses from any person in the state with a discarded mattress that was discarded in the state, including from participating covered entities that accumulated and segregated a minimum of fifty discarded mattresses for collection at one time, or a minimum of thirty discarded mattresses for collection at one time in the case of participating municipal transfer stations; (3) provide for free collection of discarded mattresses from municipal transfer stations that accumulated and segregated fewer than thirty mattresses, provided the transfer stations require such collection due to space or permit requirements; (4) provide for council-financed end-of-life management for discarded mattresses collected pursuant to subdivisions (2) and (3) of this subsection; (5) provide suitable storage containers at, or make other mutually agreeable storage and transport arrangements for, permitted municipal transfer stations for segregated, discarded mattresses, at no cost to such municipality, provided such municipal transfer station makes space available for such purpose and imposes no fee for placement of such storage container on the municipal transfer station's premises; and (6) include a fee that is sufficient to cover the costs of operating and administering the program.

(b) The plan submitted pursuant to subsection (a) of this section shall: (1) Identify each producer participating in the program; (2) describe the fee structure for the program; (3) establish performance goals for the first two years of the program; (4) identify proposed facilities to be used by the program; (5) detail how the program will promote the recycling of discarded mattresses; and (6) include a description of the public education program.

(c) The council shall establish and implement a fee structure that covers, but does not exceed, the costs of developing the plan described in subsection (b) of this section, operating and administering the program described in subsection (a) of this section and maintaining a financial reserve sufficient to operate the program over a multi-year period of time in a fiscally prudent and responsible manner. The council shall maintain all records relating to the program for a period of not less than three years.

(d) Pursuant to the program, recycling shall be preferred over any other disposal method for mattresses, to the extent that recycling is technologically feasible and economically practical.

(e) The Commissioner of Energy and Environmental Protection shall approve the plan for the establishment of the mattress stewardship program, provided such plan meets the requirements of subsections (a) to (d), inclusive, of this section. Not later than ninety days after submission of the plan pursuant to this section, the commissioner shall make a determination whether to approve the plan. Prior to making such determination, the

commissioner shall post the plan on the department's Internet web site and solicit public comments on the plan. Such solicitation shall not be conducted pursuant to chapter 54 of the general statutes. In the event that the commissioner disapproves the plan because it does not meet the requirements of subsections (a) to (d), inclusive, of this section, the commissioner shall describe the reasons for the disapproval in a notice of determination that the commissioner shall provide to the council. The council shall revise and resubmit the plan to the commissioner not later than forty-five days after receipt of notice of the commissioner's disapproval notice. Not later than forty-five days after receipt of the revised plan, the commissioner shall review and approve or disapprove the revised plan, providing a notice of determination. The council may resubmit a revised plan to the commissioner for approval on not more than two occasions. If the council fails to submit a plan that is acceptable to the commissioner because it does not meet the requirements of subsections (a) to (d), inclusive, of this section, the commissioner shall modify a submitted plan to make it conform to the requirements of subsections (a) to (d), inclusive, of this section, and approve it. Not later than one hundred twenty days after the approval of a plan pursuant to this section, or one hundred eighty days, in the case of a plan modified by the commissioner, the council shall implement the mattress stewardship program.

(f) (1) The council shall submit any proposed substantial change to the program to the Commissioner of Energy and Environmental Protection for approval. For the purposes of this subdivision, "substantial change" means: (A) A change in the processing facilities to be used for discarded mattresses collected pursuant to the program, or (B) a material change to the system for collecting mattresses. If the department does not disapprove a proposed substantial change within ninety days after notification of the proposed change, the proposed change shall be deemed approved.

(2) Not later than October 1, 2016, the council shall submit updated performance goals to the commissioner that are based on the experience of the program during the first two years of the program.

(g) The council shall notify the Commissioner of Energy and Environmental Protection of other material changes to the program on an ongoing basis, without resubmission of the plan to the commissioner for approval. Such changes shall include, but not be limited to, a change in the composition, officers or contact information of the council.

(h) On or before July 1, 2014, and every two years thereafter, the council shall propose a mattress stewardship fee for all mattresses sold in this state except crib and bassinette mattresses. The council may propose a change to the mattress stewardship fee more frequently than once every two years if the council determines such change is needed to

avoid funding shortfalls or excesses. Any proposed mattress stewardship fee shall be reviewed by an auditor to assure that such assessment does not exceed the cost to fund the mattress stewardship program described in subsection (a) of this section and to maintain financial reserves sufficient to operate said program over a multi-year period in a fiscally prudent and responsible manner. Not later than sixty days after the council proposes a mattress stewardship fee, the auditor shall render an opinion to the Department of Energy and Environmental Protection as to whether the proposed mattress stewardship fee is reasonable to achieve the goals set forth in this act. If the auditor concludes that the mattress stewardship fee is reasonable, then the proposed fee shall go into effect. If the auditor concludes that the mattress stewardship fee is not reasonable, the auditor shall provide the council with written notice explaining the auditor's opinion. Not later than fourteen days after the council's receipt of the auditor's opinion, the council may either propose a new mattress stewardship fee or provide written comments on the auditor's opinion. If the auditor concludes that the fee is not reasonable, the Department of Energy and Environmental Protection shall decide, based on the auditor's opinion and any comments provided by the council, whether to approve the proposed mattress stewardship fee. Such auditor shall be selected by the council. The cost of any work performed by such auditor pursuant to the provisions of this subsection and subsection (k) of this section shall be funded by the mattress stewardship fee described in this subsection.

(i) On and after the implementation of the mattress stewardship program, the mattress stewardship fee, established pursuant to subsection (a) of this section and described in subsection (h) of this section, shall be added to the cost of all mattresses sold to retailers and distributors in this state by each producer. On and after such implementation date, each retailer or distributor, as applicable, shall add the amount of such fee to the purchase price of all mattresses sold in this state. In each transaction described above, the fee shall be on the invoice and shall be accompanied by a brief description of the fee. The council may, subject to the commissioner's approval, establish an alternative, practicable means of collecting or remitting such fee. No producer who fails to participate in such program shall sell mattresses in the state.

(j) Not later than October fifteenth of each year, the council shall submit an annual report to the Commissioner of Energy and Environmental Protection, on a form prescribed by the commissioner. The commissioner shall post such annual report on the department's Internet web site. Such report shall include: (1) The tonnage of mattresses collected pursuant to the program from: (A) Municipal transfer stations, (B) retailers, and (C) all other covered entities; (2) the tonnage of mattresses diverted for recycling; (3) the weight of mattress materials recycled, as indicated by the weight of each of the commodities sold to secondary markets; (4) the weight of mattress materials sent for disposal at each of the following: (A) Waste-to-energy facilities, (B) landfills, and (C) any other facilities; (5) a summary of the public education that supports the program; (6) an evaluation of the effectiveness of methods and processes used to achieve

performance goals of the program; and (7) recommendations for any changes to the program.

(k) Two years after the implementation of the program and every three years thereafter, or upon the request of the Commissioner of Energy and Environmental Protection but not more frequently than once a year, the council shall cause an audit of the program to be conducted by the auditor described in subsection (h) of this section. Such audit shall review the accuracy of the council's data concerning the program and provide any other information requested by the commissioner, consistent with the requirements of this section, provided such request does not require the disclosure of any proprietary information or trade or business secrets. Such audit shall be paid for by the council. The council shall maintain all records relating to the program for not less than three years.

Sec. 3. (NEW) (*Effective July 1, 2014*) Upon implementation of the mattress stewardship program described in section 2 of this act, no covered entity that participates in such program shall charge for the receipt of discarded mattresses that are discarded in this state provided covered entities may charge a fee for providing the service of collecting mattresses and may restrict the acceptance of mattresses by number, source or physical condition.

Sec. 4. (NEW) (*Effective October 1, 2013*) Not later than three years after the approval of the mattress stewardship plan pursuant to section 2 of this act, and every two years thereafter, the Commissioner of Energy and Environmental Protection shall submit a report, in accordance with section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the environment. Such report shall provide an evaluation of the mattress stewardship program, establish a goal for the amount of discarded mattresses managed under the program and a separate goal for the recycling of such mattresses, taking into consideration technical and economic feasibilities.

Sec. 5. (NEW) (*Effective October 1, 2013*) Each producer and the council shall be immune from liability for any claim of a violation of antitrust law or unfair trade practice, if such conduct is a violation of antitrust law, to the extent such producer or council is exercising authority pursuant to the provisions of sections 1 to 7, inclusive, of this act.

Sec. 6. (NEW) (*Effective October 1, 2013*) (a) The Commissioner of Energy and Environmental Protection may seek civil enforcement of the provisions of sections 2 and 3 of this act pursuant to chapter 439 of the general statutes.

(b) Whenever, in the judgment of the commissioner, any person has engaged in or is about to engage in any act, practice or omission that constitutes, or will constitute, a violation of any provision of section 2 or 3 of this act, the Attorney General may, at the request of the commissioner, bring an action in the superior court for the judicial district

of New Britain for an order enjoining such act, practice or omission. Such order may require remedial measures and direct compliance with the provisions of section 2 or 3 of this act. Upon a showing by the commissioner that such person has engaged in or is about to engage in any such act, practice or omission, the court may issue a permanent or temporary injunction, restraining order or other order, as appropriate.

(c) Any action brought by the Attorney General pursuant to this section shall have precedence in the order of trial, as provided in section 52-191 of the general statutes.

Sec. 7. (NEW) (*Effective October 1, 2013*) In the event that another state implements a mattress recycling program, the council may collaborate with such state to conserve efforts and resources used in carrying out the mattress stewardship program, provided such collaboration is consistent with the requirements of sections 1 to 6, inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>July 1, 2014</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section

Statement of Purpose:

To establish a mattress stewardship program that will reduce the cost to municipalities of handling discarded mattresses.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]